

SELECT  
COMMITTEE  
DECISION  
J. SANDERS  
11/15/96



# Alaska State Legislature

House of Representatives

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Official Business

Office of the Chief Clerk

January 22, 1997

## MEMORANDUM

TO: Representative Pete Kott  
Chairman, Rules Committee

FROM: Suzi Lowell   
Chief Clerk

SUBJECT: Select Committee on Legislative Ethics - Decision H 96-02

Attached is a copy of Decision H 96-02 by the Select Committee on Legislative Ethics regarding Representative Sanders. The decision was referred today to the Rules Committee for consideration.

Attachment as noted.

# Alaska State Legislature

## Select Committee on Legislative Ethics

### HOUSE SUBCOMMITTEE

In re: Representative Jerry Sanders

DECISION: H 96-02

The House Subcommittee of the Select Committee on Legislative Ethics (Committee) finds that Representative Jerry Sanders violated the Ethics Act by using state funds, legislative staff, state equipment and state facilities for nongovernmental purposes, including political purposes. The Committee reached this decision based on clear and convincing evidence and did not find it necessary to make inferences from those witnesses who exercised the privilege against self-incrimination.

In this decision, the Committee sets out the procedural history of the complaint, the reasons for its determination, including a review of the evidence presented at the public hearing held November 14th and 15th 1996, and recommendations to the House of Representatives for sanctions to be imposed on Representative Sanders.

#### A. Procedural History

A complaint was filed with the Committee against Rep. Sanders on April 19, 1996. Following the requirements of AS 24.60.170, the Committee determined that the complaint was in the proper form and contained allegations, which if true, would constitute violations of the Ethics Act, and issued a resolution defining the scope of investigation into the complaint on July 24, 1996. An investigation was conducted. After reviewing the results of the investigation, on September 23, 1996, the Committee found probable cause to believe Rep. Sanders had committed violations of the Ethics Act that might require sanctions instead of, or in addition to, corrective action and therefore issued formal charges.

Rep. Sanders was served with the charges but did not choose to answer them. Therefore the Committee scheduled a hearing on the charges for November 14th and 15th, 1996. The Committee appointed Michael N. White as its Hearing Officer to address pre-hearing issues and preside over the hearing. On October 28, 1996, Rep. Sanders sought relief in Superior Court in Anchorage on several pre-hearing issues. His case was dismissed because the Superior Court found it did not have jurisdiction over the internal affairs of the Legislature.

The Committee held a public hearing on the charges on November 14th and 15th, 1996. Members of the Committee present (Rep. Cynthia Toohey and the public members: Joseph Donahue, Ed Granger, Margie Mac Neille, Shirley McCoy and Edith Vorderstrasse) heard testimony presented by the Committee's counsel Michael Spaan and staff. Rep. Sander's attorney, Lester Syren, cross-examined Committee witnesses but elected not to present any witnesses. At the conclusion of the public hearing, the Committee began its deliberations, using only the evidence admitted during the hearing. After determining that violations had occurred, the Committee reviewed the public record of pleadings and correspondence which had been received after the probable cause determination.

Rep. Sanders, a member of his staff and an ex-employee claimed their 5th Amendment right not to testify in response to numerous questions at the hearing.<sup>1</sup> Although the Committee is permitted, as a matter of law, to draw inferences from their doing so, it did not do so in making its findings or reaching its decision. Unfortunately, the witnesses' exercise of their privilege may have deprived the committee of information which could have explained, or made less serious, the violations which the evidence presented demonstrated. The Committee regrets that it has never heard Rep. Sanders' side of the story, although he has been given every opportunity to tell it. However, the Committee must deal with the evidence before it. The Committee will not be referring this matter to any other authority under AS 24.60.170(1).

#### **B. Reasons for determination**

The Committee finds, as alleged in Charge I of the formal charges,

That Rep. Sanders used public funds, facilities, equipment, services or another government asset or resource for a non-governmental purpose or for his own private benefit or the benefit of another person by producing or mailing, to one or more people, a letter dated March 4, 1996 concerning participation in the Republican Party's presidential straw poll, in violation of AS 24.60.030(a)(2).

On January 29, 1996, the Republican Party of Alaska held a Presidential Straw Poll. (Testimony of Linda McKay) People participating in the straw poll in District 19, Rep. Sanders' district, wrote their names and addresses on sign-in forms. (Ex. 5)

Earnest Woods, who attended the Republican Straw Poll for District 19, subsequently received a letter. (Ex. 6) The letter is on the letterhead of Rep. Jerry Sanders, which indicates he serves as Chairman of the Economic Development Committee of the Alaska State Legislature, includes the seal of the state of Alaska and is marked "Official Business". The letter is dated March

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<sup>1</sup> They declined to testify on the advice of their attorney on the grounds that their testimony might subject them to criminal prosecution.

4, 1996; its envelope bears the return address "Representative Jerry Sanders, State Capitol, Room 13, Juneau, Alaska 99801-1182" and a Juneau postmark of March 5, 1996. The letter is signed "Jerry". Under the typed signature line, "Representative Jerry Sanders", the initials "JS:jl" appear. (Testimony of Earnest Woods, Exs. 5 & 6)

The text for this letter and a mailing list containing 265 names corresponding to names on the District 19 Republican Straw Poll sign-in forms were found, under the file names "strawpoll" and "poll", in a computer located in Rep. Sanders' office and used by his employee, Jeanné Lovell. File information from that computer shows that one document was last modified on March 4, 1996 at 10:38 am and the other was last modified at 10:43 am that day. (Exs. 11 and 12)

March 4th, 1996 was a Monday during the legislative session and it was not a holiday. Rep. Sanders' office employees during the legislative session included Jeanne Lovell and Patricia Perez. (Exs. 8 & 9) Ms. Lovell's time cards for the period indicate that she did not file any leave slips for March 4th or 5th (or any at all for the period from January 29th through March 5th.) (Ex. 7) Ms. Perez did not recall doing any project that wasn't "with the job". (Testimony of Patricia Perez) Ms. Perez told the Committee's investigator, Susan Barnett, that she printed out, folded and mailed the March 4 letter to Republican Straw Poll participants, assisting Jeanne Lovell in the project. (Testimony of Susan Barnett, Ex. 15) The Committee determined that the tasks related to the letter were completed while the employees were on government time.

On March 5, 1996, \$76.48 was charged to the Juneau Mailroom Account maintained for Rep. Sanders by Legislative Services, reflecting the mailing of 239 pieces of mail. (Ex. 10) That account was funded by transfers, of \$100 on January 16, 1996 and \$250 on March 7, 1996, from Rep. Sanders' "accountable" office account. (Ex. 4) Legislators receive an office allowance of \$6000 per year from the Legislature. They may choose to take this allowance in cash, after payroll and income tax deductions, or they may leave it on account with the Legislative Affairs Agency. If they choose this option, they may only submit for payment business-related expenses, substantiated by receipts. No taxes are paid on money disbursed under this account. (Exs. 1 & 3). Rep. Sanders chose the "accountable" office allowance plan. (Ex. 4) The Committee determined that funds held in the "accountable" office account are public funds, not to be used for personal purposes.

The Committee finds that there is clear and convincing evidence Rep. Sanders sent this letter as part of a mass mailing on March 5th. It was on his stationary, prepared and mailed from his office by his employees, and its signature matches the signature on his office allowance form. (Ex. 4) The Committee finds that the act of preparing and sending the letter used public funds (the accountable office allowance) for postage; used public facilities and equipment (the state computer in his office) and used public resources (the staff time of his employees).

The text of the letter is as follows :

I would like to take this opportunity to thank you for your participation in the first presidential straw poll to be held in Alaska. Not only have we broken new ground historically, politically we have gained prestige on the national level.

It was exciting to learn that District 19's participation was among the strongest areas to go out and cast a vote for a presidential candidate. With the inclement weather to deal with, I really appreciate the interest shown by my fellow Republicans.

Seeing a lot of you in the halls of the polling station within my district was indeed a pleasure. If I didn't get a chance to talk with you, please accept my apology.

I have always held in high regard those people who will go that "extra mile" to do what is needed. Taking the time out of your busy schedule to fulfill your civic duty is greatly appreciated.

The Committee finds, by clear and convincing evidence, that this letter does not have a legislative purpose. It concerns a function of a political party on a national level, the effort to influence the choice of the Republican nominee for President. It was sent to active members of Rep. Sanders' political party, in his district, in a year he was running for election. Legislators may use public funds, facilities and staff to communicate with constituents if that communication has a connection to a legislative purpose. This letter has a political, not a legislative purpose. The Committee finds that Rep. Sanders' use of public funds, facilities and equipment and staff time was for a nongovernmental purpose, and for his private benefit (campaign good will) and for the benefit of another person (the Republican Party). Under AS 24.60.030(a)(2), any one of these purposes is a violation.

AS 24.60.030(a)(2)(A) does not prohibit limited use of public funds, facilities and equipment or resources for personal purposes if the use does not interfere with the performance of public duties and the cost or value related to the use is nominal. The Committee finds that this exception does not apply in this case. Ms. Perez told Ms. Barnett that she and Ms. Lovell worked on the production and mailing of the letter for about a day, with other legislative duties being done in between. (Testimony of Ms. Barnett, Ex. 15). Ms. Donna Daniels, a skilled legal secretary, recreated the letter and a mailing list from the District 19 sign-in forms, printed them, folded them, stuffed them in envelopes and ran them through a postage meter in 6 1/2 hours. (Testimony of Donna Daniels) Unless Rep. Sanders' employees had no public duties to perform (an assumption the Committee is unwilling to make), the tasks related to the letter interfered by necessity with their public duties for that period. The Committee finds the cost of producing the mass mailing is not nominal.

**The Committee finds, as alleged in Charge II.**

That Rep. Sanders used or authorized the use of state funds, facilities, equipment, services or another governmental asset or resource for the purpose of political fundraising or campaigning by producing and mailing, to one or more people, a letter dated March 4, 1996 concerning participation in the Republican Party's presidential straw poll, in violation of AS 24.60.030(a)(5).

Under Charge I above, the Committee has already found that Rep. Sanders used state funds, facilities and equipment, and resources (staff time) to produce the letter dated March 4th. Under this section of the Ethics Act, the issue is whether the letter was for the purpose of political fundraising or campaigning. The Committee, by clear and convincing evidence, finds that the letter was not for political fundraising but that it was for the purpose of political campaigning, for the Republican Party generally and Rep. Sanders individually. (Ex. 6)

Under AS 24.60.030(5), just as under AS 24.60.030(a)(2), limited use of state property and resources for personal purposes is permitted if the use does not interfere with the performance of public duties and the cost is nominal. As in Charge I, the Committee finds this exception does not apply.

**The Committee finds, as alleged in Charge III,**

That Rep. Sanders required an employee to assist in political party or candidate activities, campaigning or fundraising while on government time, by requiring a legislative employee to perform duties related to the production and mailing of a letter, to one or more people, dated March 4, 1996 concerning participation in the Republican Party's presidential straw poll, in violation of AS 24.60.030(b).

The Committee finds, by clear and convincing evidence, that Rep. Sanders did so violate AS 24.60.030(b). Rep. Sanders' initials and signature appear on the letter Mr. Woods received, indicating that he generated the letter. It is highly improbable to the Committee that the mass mailing took place without his directing his employees to carry it out. Legislators are responsible for the activities of their employees while the employees are on government time. As discussed in Charge II above, the letter constituted a political party activity and campaigning (but not fundraising).

**C. Cooperation of Representative Sanders**

Under AS 24.60.170(k), the Committee's decision following a public hearing may indicate whether the subject cooperated with the Committee in its proceedings. Rep. Sanders did not cooperate with the Committee in this case. In several areas, Rep. Sanders' view of the applicable law is different than that

of the committee's, specifically whether the judicial branch of state government has jurisdiction over the Ethics Committee and whether one person can claim the 5th Amendment privilege against self-incrimination to avoid testimony that might incriminate another person. A subject does not have to agree with the Committee to be considered cooperative, and the committee does not hold these differences of opinion against Rep. Sanders. However, these issues aside, the Committee finds, upon reviewing the pleadings and correspondence in the case since the probable cause determination, a pattern of delaying and obstructing tactics (including lack of compliance with the Hearing Officer's orders) which constitutes a lack of cooperation which was inappropriate.

#### D. Recommended Sanctions

Since the Committee has found both violations of the Ethics Act and a lack of cooperation by the subject, it must recommend to the House the sanctions it deems appropriate. In making these recommendations the Committee considered several factors.

First, the offenses must be looked at in light of the spectrum of possible violations. A considerable amount of legislative staff time, \$76 in postage, and the official state letterhead were used for partisan political purposes. Although significant, the offenses are not the most serious.

Second, the Committee has found probable cause to believe that Rep. Sanders violated the Ethics Act twice before and has required corrective action. Although the second offense was minor, both violations involved using state resources for personal or political benefit. It does not appear that the corrective actions required by the Committee in the past have had the desired positive effect on Rep. Sanders' conduct in this area.

Third, state resources are entrusted to the legislators for their use in performing their legislative functions. The public has the right to expect that these resources will not be diverted to other purposes. Public trust in the legislature depends on the assurance that a legislator will not use these resources in partisan efforts or for personal benefit.

The Committee and the Legislature must take a strong stand when misuse of public resources occurs. The Committee has increased the sanctions recommended because of the prior findings of probable cause that Rep. Sanders violated the Ethics Act and because of his lack of cooperation.

The sanctions recommended by the Committee for imposition by the House are:

1. Rep. Sanders shall be stripped of any committee chairmanships he may hold for his next term. Being a committee chair places additional state

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resources at a legislator's disposal and the use of committee resources in this violation has demonstrated that Rep. Sanders cannot use those resources appropriately.

2. Rep. Sanders shall be required to choose the "non-accountable" option for office accounts, receiving his \$6000 office allowance in cash, net of appropriate taxes. Under the legislature's rules, he may then use the money as he wishes, avoiding any future issues of inappropriate claims of legislative business expense against an office account.

3. Rep. Sanders shall reimburse the Legislative Affairs Agency for the \$76.48 postage and 8 hours compensation for one Range 21 Step A employee. (\$207.44) This is obviously not an exact equivalent of the labor cost of Rep. Sanders' employees' work on the letter, but it is intended to represent that cost.

4. Rep. Sanders shall make a public apology to the members of the House and the public on the floor of the house during session for his misuse of state assets. The apology shall be full and complete and must include accepting responsibility before the legislature for actions taken in his office, even if he wishes to avoid directly saying he participated in order to protect his 5th Amendment right against self-incrimination. The Committee believes that legislators as a group properly use the public resources entrusted to them and comply with the requirements of the Ethics Act. Actions like Rep. Sanders' reflect poorly on the other legislators who act responsibly.

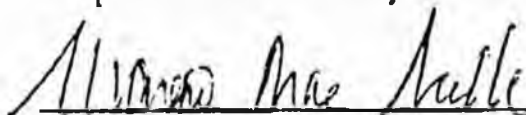
5. Rep. Sanders shall adopt, file with the Committee and post in his office a written policy for his employees on the use of government time for government functions, requiring the use of leave time, properly documented, for personal, political or other nongovernmental activities.

6. Rep. Sanders shall complete corrective actions called for in earlier Committee decisions, specifically, attending Ethics training with his staff.

7. Rep. Sanders shall not be allowed to use legislative funds for out-of-state travel during his next term.

Recommendations 2,3,4,5 and 6 are to be completed within 20 days of the date sanctions are imposed by the House.

Adopted on the 15th day of November, 1996



Margie Mac Neille, Chair  
House Subcommittee  
Select Committee on Legislative Ethics